

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MOHAMED A. MAHMOUD,

Plaintiff

V.

BOARD OF PRISON COMMISSIONERS, et al.

## Defendants

Case No.: 2:22-cv-00368-JAD-VCF

**Order Confirming Voluntary Dismissal  
Under Rule 41(a)(1) and Denying Motions  
as Moot**

[ECF Nos. 25, 28, 29, 31, 32, 35, 40]

9 In screening pro se prisoner Mohamed Mahmoud's complaint in this civil-rights action, I  
10 found that he pled colorable First Amendment retaliation and Eighth Amendment excessive-  
11 force claims and allowed those claims to proceed to mediation with a court-appointed mediator.  
12 But it appeared that Mahmoud initiated this action just 12 days after the conduct he complains  
13 about occurred. So I explained that the Prison Litigation Reform Act (PLRA) requires prisoners  
14 to exhaust their available administrative remedies before filing lawsuits challenging prison  
15 conditions. I noted some circumstances when an administrative remedy could be considered not  
16 available and therefore prevent dismissal for failure to exhaust if defendants raised that issue in a  
17 proper motion. And I told Mahmoud that he could file a notice voluntarily dismissing this action  
18 without prejudice to file a new action if he needed time to comply with the PLRA's exhaustion  
19 requirement.<sup>1</sup>

20 About a month later Mahmoud filed a document titled “Motion to Dismiss Action  
21 Without Prejudice” in which he seeks to dismiss this action to exhaust his administrative  
22 remedies. Mahmoud states facts in the motion that could be construed as arguing why no

<sup>1</sup> ECF No. 26.

1 administrative remedies are available to resolve his claims. For example, Mahmoud states that  
 2 Sgt. Navarrete told Mahmoud he would be retaliated against if he continued filing grievances  
 3 against the staff.<sup>2</sup> Because the court had not ruled on the dismissal motion, about two months  
 4 later Mahmoud filed another motion titled “Motion to Dismiss an Action Without Prejudice” in  
 5 which he seeks to dismiss this action to exhaust his administrative remedies and again states  
 6 facts that could be construed as arguing why he cannot do so. Mahmoud also reports that he has  
 7 been moved to another prison.<sup>3</sup>

8 Mahmoud does not invoke Federal Rule of Civil Procedure 41(a)(1) in either dismissal  
 9 motion, but it is clear to this jurist that this rule is the basis of his requests. Rule 41(a)(1)(A)(i)  
 10 permits a plaintiff to dismiss an action without a court order by filing “a notice of dismissal  
 11 before the opposing party serves either an answer or a motion for summary judgment[.]” The  
 12 Ninth Circuit instructed in *Commercial Space Management Company, Inc. v. Boeing Company, Inc.*  
 13 that “it is beyond debate that a dismissal under Rule 41(a)(1) is effective on filing, no court  
 14 order is required, the parties are left as though no action had been brought, the defendant can’t  
 15 complain, and the district court lacks jurisdiction to do anything about it.”<sup>4</sup>

16 The answer to just how to treat Mahmoud’s motions is not a straightforward one because  
 17 he moves to voluntarily dismiss this action to exhaust his administrative remedies while  
 18 simultaneously stating reasons why those remedies might not be available to him. This difficulty  
 19 is no doubt complicated by Mahmoud’s incarceration. But no responsive pleading or summary-  
 20 judgment motion has been filed in this case, so Mahmoud’s voluntary dismissal was effective

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 2 ECF No. 35.

23<sup>3</sup> ECF No. 40.

<sup>4</sup> *Com. Space Mgmt. Co. Inc. v. Boeing Co., Inc.*, 193 F.3d 1074, 1078 (9th Cir. 1999).

1 under Rule 41(a)(1) upon its filing regardless of the “motion” label he used to do so.<sup>5</sup> And as  
2 *Commercial Space* instructs, Rule 41(a)(1) leaves no room for this court “to do anything about  
3 it.”<sup>6</sup>

4 IT IS THEREFORE ORDERED that Mahmoud’s motions to dismiss this action without  
5 prejudice (**ECF Nos. 35, 40**) are construed as notices of voluntary dismissal under Federal Rule  
6 of Civil Procedure 41(a)(1)(A)(i), and it is confirmed that **this action is DISMISSED**  
7 **WITHOUT PREJUDICE.**

8 IT IS FURTHER ORDERED that Mahmoud’s motions for various relief (**ECF Nos. 25,**  
9 **28, 29, 31, 32**) are **DENIED** as moot.

10 Finally, the Clerk of the Court is directed to CLOSE THIS CASE accordingly.

11 Dated: August 9, 2022

12   
U.S. District Judge

23<sup>5</sup> *See id.* at 1076 (discussing Commercial Space’s second voluntary dismissal).

<sup>6</sup> *Id.* at 1078.